

**NOTICE OF INTENT**

Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division

**Incorporation by Reference of the Acid Rain Program  
(LAC 33:III.505) (AQ259ft)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.505 (Log #AQ259ft).

This proposed rule is identical to federal regulations found in 40 CFR Part 72 (July 1, 2005), and 70 FR 25162-25210 (May 12, 2005) and 71 FR 25328-25469 (April 28, 2006), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rule replaces the existing Acid Rain Program regulations with an incorporation by reference of the recently revised federal regulations concerning the Acid Rain Program. This action is necessary in order for Louisiana to adopt the general and specific provisions for the CAIR SO<sub>2</sub> Trading Program, under Section 110 of the Clean Air Act, as a means of mitigating interstate transport of fine particulate and sulfur dioxide. By adopting the Acid Rain Program, 40 CFR Part 72, in its entirety, the state is authorizing EPA to assist the state in implementing the CAIR SO<sub>2</sub> Trading Program.

On March 10, 2005, EPA announced the Clean Air Interstate Rule (CAIR), a rule that will achieve reduction in air pollution by regulating sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) emissions from 23 states and the District of Columbia. These pollutants contribute to levels of fine particles (PM<sub>2.5</sub>) in areas above the air quality standard in downwind states. In addition, NO<sub>x</sub> emissions in 25 eastern states and the District of Columbia contribute to levels of ozone in areas above the air quality standard for 8-hour ozone in other downwind states. In developing the CAIR SO<sub>2</sub> regulations and the cap-and-trade program, the Environmental Protection Agency relied on the successful Acid Rain Program/cap-and-trade program. The resulting CAIR SO<sub>2</sub> cap-and-trade program was merged with the Acid Rain cap-and-trade program when CAIR defined CAIR SO<sub>2</sub> allocations as those allocations made under the Acid Rain Program. EPA has promulgated changes to the Acid Rain Program that reflect the CAIR SO<sub>2</sub> requirements. These actions enable the CAIR SO<sub>2</sub> cap-and-trade program to accept Acid Rain SO<sub>2</sub> allocations for trading, selling, and/or determining compliance with the CAIR SO<sub>2</sub> program. The recent changes to the Acid Rain Program at the federal level due to CAIR will require the state to modify its Acid Rain rule at LAC 33:III.505. The incorporation

of the federal Acid Rain Rule will ensure continuity between the Acid Rain Program and the implementation of the CAIR SO<sub>2</sub> Program. The basis and rationale for this rule are to mirror the federal regulations.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on July 25, 2006, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ259ft. Such comments must be received no later than July 25, 2006, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to [judith.schuerman@la.gov](mailto:judith.schuerman@la.gov). The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ259ft. This regulation is available on the Internet at [www.deq.louisiana.gov](http://www.deq.louisiana.gov) under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM  
Executive Counsel

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part III. Air**

**Chapter 5. Permit Procedures**

**§505. Acid Rain Program Permitting Requirements**

A. Acid Rain Program General Provisions. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR 72.1-72.13, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

B. Designated Representative. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR 72.20-72.25, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

C. Acid Rain Permit Applications. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR 72.30-72.33, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

D. Acid Rain Compliance Plan and Compliance Options. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR 72.40-72.44, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

E. Acid Rain Permit Contents. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR 72.50-72.51, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

F. Federal Acid Rain Permit Issuance Procedures. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR 72.60-72.69, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

G. Acid Rain Phase II Implementation. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR 72.70-72.74, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

H. Permit Revisions. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR 72.80-72.85, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

I. Compliance Certification. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR 72.90-72.96, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

J. Methodology for Annualization of Emissions Limits. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR Part 72, Appendix A, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

K. Methodology for Conversion of Emissions Limits. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR Part 72, Appendix B, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

L. Actual 1985 Yearly SO<sub>2</sub> Emissions Calculation. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR Part 72, Appendix C, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

M. Calculation of Potential Electric Output Capacity. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR Part 72, Appendix D, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

N. Copies of documents incorporated by reference in this Section may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html); from the Department of Environmental Quality, Office of Environmental Services, Air Permits Division; or from a public library.

O. Modifications or Exceptions. Whenever the referenced regulations (i.e., 40 CFR Part 72) provide authority to “the Administrator,” such authority, in accordance with these regulations, shall be exercised by the administrative authority or his designee, notwithstanding any authority exercised by the U.S. Environmental Protection Agency (EPA). Reports, notices, or other documentation required by the referenced regulations (i.e., 40 CFR Part 72) to be provided to “the Administrator” shall be provided to the Office of Environmental Services, Air Permits Division, where the state is designated authority by EPA as “the Administrator,” or shall be provided to the Office of

Environmental Services, Air Permits Division and EPA, where EPA retains authority as “the Administrator.”

A. ~~Applicability. The provisions of this Section apply to any affected source subject to any acid rain emissions reduction requirement or acid rain emissions limitation pursuant to Title IV of the Clean Air Act. A certifying official of any unit may petition the administrator for a determination of applicability under 40 CFR 72.6(c). The administrator's determination of applicability shall be binding upon the permitting authority unless the petition is found to have contained significant errors or omissions.~~

1. ~~Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the Acid Rain Program:~~

a. ~~a unit listed in 40 CFR Part 73, Subpart B, Table 1;~~  
 b. ~~an existing unit that is identified in Table 2 or 3 of 40 CFR 73.10 and any other existing utility unit, except a unit under Paragraph A.2 of this Section; and~~

c. ~~a utility unit, except a unit under Paragraph A.2 of this Section, that:~~

i. ~~is a new unit;~~  
 ii. ~~did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990, but serves such a generator after November 15, 1990;~~

iii. ~~was a simple combustion turbine on November 15, 1990, but adds or uses auxiliary firing after November 15, 1990;~~

iv. ~~was an exempt cogeneration facility under Subparagraph A.2.e of this Section, but during any three calendar year period after November 15, 1990, sold to a utility power distribution system, an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs electric output, on a gross basis;~~

v. ~~was an exempt qualifying facility under Subparagraph A.2.f of this Section but, at any time after the latter of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;~~

vi. ~~was an exempt independent power production facility under Subparagraph A.2.g of this Section but, at any time after the latter of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or~~

vii. ~~was an exempt solid waste incinerator under Subparagraph A.2.h of this Section but during any three calendar year period after November 15, 1990, consumes 20 percent or more (on a Btu basis) fossil fuel.~~

2. ~~The following types of units are not affected units subject to the requirements of the Acid Rain Program:~~

a. ~~a simple combustion turbine that commenced operation before November 15, 1990;~~

b. ~~any unit that commenced commercial operation before November 15, 1990 and that did not, as of November 15, 1990, and does not currently serve a generator with a nameplate capacity of greater than 25 MWe;~~

c. ~~any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently serve a generator that produces electricity for sale;~~

d. ~~a nonutility unit;~~

e. ~~a cogeneration facility which:~~

i. ~~for a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one third of its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it will be presumed to be consistent with the actual operation from 1985 through 1987 for such purpose. However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program; or~~

ii. ~~for units which commenced construction after November 15, 1990, supplies equal to or less than one third of its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program;~~

f. ~~a qualifying facility that:~~

i. ~~has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and~~

ii. ~~consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt;~~

g. ~~an independent power production facility that:~~

i. ~~has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and~~

ii. ~~consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of its total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt;~~

h. ~~a solid waste incinerator, if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a~~

solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of nonfossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of nonfossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, during any three calendar year period after November 15, 1990, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the Acid Rain Program.

3. — Each affected source under the federal Acid Rain Program shall be subject to all requirements of this Chapter, including provisions for submittal of permit applications, permit review and issuance, permit revisions, reopenings, and renewals, except as specifically noted in this or other sections of this Chapter.

4. — Any requirement, provision, or emissions limitation of the federal regulations of the Acid Rain Program, where applicable to an affected source, shall supersede this Chapter to the extent that such federal regulations are inconsistent with this Chapter.

#### B. — New Units Exemption

1. — Applicability. This Section applies to any new utility unit that serves one or more generators with total nameplate capacity of 25 MWe or less and burns only fuels with a sulfur content of 0.05 percent or less by weight, as determined for a sample of each fuel delivery using the methods specified in Subparagraph B.4.a of this Section.

2. — Exemption. The designated representative, authorized in accordance with 40 CFR Part 72, Subpart B, of a source that includes a unit under Paragraph B.1 of this Section may petition the Office of Environmental Services, Air Permits Division, for a written exemption or to renew a written exemption for the unit from certain requirements of the Acid Rain Program. The petition shall contain the following elements:

- a. — identification of the unit;
- b. — the nameplate capacity of each generator served by the unit;
- c. — a list of all fuels currently burned by the unit and their percentage sulfur content by weight, determined in accordance with Paragraph B.1 of this Section;
- d. — a list of all fuels that are expected to be burned by the unit and their sulfur content by weight; and
- e. — the special provisions required by Paragraph B.4 of this Section.

#### 3. — Permitting Authority's Action

a. — The permitting authority shall issue, to any unit meeting the requirements of Paragraphs B.1 and 2 of this Section, a written exemption from the requirements of the Acid Rain Program except for the requirements specified in this Subsection or 40 CFR 72.1-6 and 72.10-13; provided that no unit shall be exempted unless the designated representative of the unit surrenders, and the administrator deducts from the unit's Allowances Tracking System account, allowances pursuant to 40 CFR 72.7(c)(1)(i) and (d)(1). The exemption shall take effect on January 1 of the year

~~immediately following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with Subparagraph B.3.b of this Section; provided that the owners and operators and, to the extent applicable, the designated representative shall comply with the requirements of the Acid Rain Program concerning all years for which the unit was not exempted, even if such requirements arise, or must be complied with, after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the Acid Rain Program whether the violation occurs before or after the exemption takes effect.~~

~~b. In considering and issuing or denying a written exemption under Subparagraph B.3.a of this Section, the permitting authority shall apply the permitting procedures of LAC 33:III.519 and shall:~~

~~i. treat the petition as an acid rain permit application under such provisions; and~~

~~ii. issue or deny a proposed written exemption that is treated as the issuance or denial of a permit under LAC 33:III.519.~~

~~c. A written exemption issued under this Section shall have a term of five years from its effective date, except as provided in Subparagraph B.4.c of this Section.~~

#### ~~4. Special Provisions~~

~~a. The owners and operators of each unit exempted under this Section shall determine the sulfur content by weight of its fuel using the methods specified in 40 CFR 72.7(d)(2).~~

~~b. The owners and operators of each unit exempted under this Section shall retain, at the source that includes the unit, the records of the results of the tests performed under Subparagraph B.4.a of this Section and a copy of the purchase agreements stating the sulfur content of all such fuel. Such records and documents shall be retained for five years from the date they are created.~~

~~c. On the earlier of the date the written exemption expires, the date a unit exempted under this Section burns any fuel with a sulfur content in excess of 0.05 percent by weight (as determined in accordance with Subparagraph B.4.a of this Section), or 24 months prior to the date the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe, the unit shall no longer be exempted under this Section and shall be subject to all requirements of the Acid Rain Program, except that:~~

~~i. notwithstanding Paragraphs D.2 and 3, the designated representative of the source that includes the unit shall submit a complete acid rain permit application to the Office of Environmental Services, Air Permits Division, on the latter of January 1, 1998, or the date the unit is no longer exempted under this Section; and~~

~~ii. for purposes of applying monitoring requirements under 40 CFR Part 75, the unit shall be treated as a new unit that commenced commercial operation on the date the unit no longer meets the requirements of Paragraph B.1 of this Section.~~

#### ~~C. Retired Units Exemption~~

~~1. Applicability. This Section applies to any affected unit that is retired prior to issuance (including renewal) of a phase II acid rain permit for the unit.~~



## 2. — Exemption

a. — ~~The designated representative, authorized in accordance with 40 CFR Part 72, Subpart B, of a source that includes a unit under Paragraph C.1 of this Section may petition the permitting authority for a written exemption or to renew a written exemption for the unit from certain requirements of this Section.~~

b. — ~~A petition under this Subsection shall be submitted to the Office of Environmental Services, Air Permits Division, on or before:~~

i. — ~~the deadline for submitting acid rain permit application for Phase II; or~~

ii. — ~~if the unit has a Phase II acid rain permit, the deadline for reapplying for such permit.~~

c. — ~~The petition under this Section shall include the following elements:~~

i. — ~~identification of the unit;~~

ii. — ~~the applicable deadline under Subparagraph C.2.b of this Section;~~

iii. — ~~the actual or expected date of retirement of the unit;~~

iv. — ~~the following statement:~~

~~"I certify that this unit is (or will be) permanently retired on the date specified in this petition and will not emit any sulfur dioxide or nitrogen oxides after such date.";~~

v. — ~~a description of any actions that have been or will be taken and provide the basis for the certification in Clause C.2.c.iv of this Section; and~~

vi. — ~~the special provisions in Paragraph C.4 of this Section.~~

## 3. — Permitting Authority's Action

a. — ~~The permitting authority shall issue, for any unit meeting the requirements of Paragraphs C.1 and 2 of this Section, a written exemption from the requirements of this Section except for the requirements specified in this Subsection and 40 CFR 72.1-6, 72.8, and 72.10-13. The exemption shall take effect on January 1 of the year following the date on which the written exemption is issued in accordance with Subparagraph C.3.b of this Section, provided that the owners and operators and, to the extent applicable, the designated representative shall comply with the requirements of this Section and 40 CFR Part 72 concerning all years for which the unit was not exempted, even if such requirements arise or must be complied with after the exemption takes effect. The exemption shall not be a defense against any violation of the requirements of the Acid Rain Program that occurs prior to such issuance.~~

b. — ~~In considering and issuing or denying a written exemption under Subparagraph C.3.a of this Section, the permitting authority shall apply the permitting procedures of LAC 33:III.519 and shall:~~

i. — ~~treat the petition as an acid rain permit application under such provisions;~~

ii. — ~~issue or deny a proposed written exemption that is treated as a proposed permit under LAC 33:III.531 and 533.~~

c. — ~~A written exemption issued under this Section shall have a term of five years, except as provided in Subparagraph C.4.c of this Section.~~

## 4. — Special Provisions

~~a. — A unit exempted under this Section shall not emit any sulfur dioxide and nitrogen oxides starting on the date it is exempted.~~

~~b. — The owners and operators of a unit exempted under this Subsection shall comply with monitoring requirements in accordance with 40 CFR Part 75 and will be allocated allowances in accordance with 40 CFR Part 73.~~

~~c. — A unit exempted under this Subsection shall not resume operation unless the designated representative of the source that includes the unit submits an acid rain permit application for the unit to the department not less than 24 months prior to the latter of January 1, 2000, or the date the unit is to resume operation. On the earlier of the date the written exemption expires or the date an acid rain permit application is submitted or is required to be submitted under this Subsection and shall be subject to all requirements of this Section and 40 CFR Part 72.~~

~~D. — Requirement to Apply~~

~~1. — Duty to Apply. The designated representative of any source with an affected unit shall submit a complete acid rain permit application to the Office of Environmental Services, Air Permits Division, by the applicable deadline in Paragraphs D.2 and 3 of this Section and the owners and operators shall not operate the source without a permit that states its Acid Rain Program requirements~~

~~2. — Deadlines~~

~~a. — Phase II. For any source with an existing unit under Subparagraph A.1.a or b of this Section, the designated representative shall submit a complete acid rain permit application governing such unit during Phase II to the department on or before January 1, 1996.~~

~~b. — For any source with a new unit under Clause A.1.c.i of this Section, the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the latter of January 1, 2000, or the date on which the unit commences operation.~~

~~c. — For any source with a unit under Clause A.1.c.ii of this Section, the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the latter of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.~~

~~d. — For any source with a unit described in Clause A.1.c.iii of this Section, the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the latter of January 1, 2000, or the date on which the auxiliary firing commences operation.~~

~~e. — For any source with a unit described under Clause A.1.c.iv of this Section, the designated representative shall submit a complete acid rain permit application governing such unit to the department before the latter of January 1, 1998, or March 1 of the year following the three calendar year period in which the unit sold to a utility power distribution system an annual average of more than one third of its potential electrical output capacity and more than 219,000 MWe hrs actual electric output (on a gross basis).~~

~~f. — For any source with a unit described in Clause A.1.c.v of this Section, the designated representative shall submit a complete acid rain permit application governing such unit to the department before the latter of January 1, 1998, or~~

March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

g. — For any source with a unit described in Clause A.1.c.vi of this Section, the designated representative shall submit a complete acid rain permit application governing such unit to the department before the latter of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

h. — For any source with a unit described in Clause A.1.c.vii of this Section, the designated representative shall submit a complete acid rain permit application governing such unit to the department before the latter of January 1, 1998, or March 1 of the year following the three calendar year period in which the incinerator consumed 20 percent or more fossil fuel (on a Btu basis).

3. — Duty to Reapply. The designated representative shall submit a complete acid rain permit application to the Office of Environmental Services, Air Permits Division, for each source with an affected unit at least six months prior to the expiration of an existing acid rain permit governing the unit during Phase II, or such longer time as may be approved under 40 CFR Part 70 that ensures that the term of the existing permit will not expire before the effective date of the permit for which the application is submitted.

4. — Four copies of all permit applications shall be submitted to the Office of Environmental Services, Air Permits Division.

5. — Permit Issuance Deadline

a. — i. — On or before December 31, 1997, the permitting authority shall issue an acid rain permit to each affected source whose designated representative submitted a timely and complete acid rain permit application by January 1, 1996, in accordance with Subsection R of this Section and meets the requirements of this Section.

ii. — Each acid rain permit issued in accordance with this Section shall have a term of five years commencing on its effective date. Each acid rain permit issued in accordance with Clause D.5.a.i of this Section shall take effect by the latter of January 1, 2000, or where the permit governs a unit under Subparagraph A.1.c of this Section, the deadline for monitor certification under 40 CFR Part 75.

b. — Nitrogen Oxides. Not later than January 1, 1999, the permitting authority shall reopen the acid rain permit to add the Acid Rain Program nitrogen oxides requirements provided that the designated representative of the affected source submitted a timely and complete acid rain permit application for nitrogen oxides in accordance with Subsection R of this Section. Such reopening shall not affect the term of the acid rain portion of an operating permit.

E. — Requirements for Acid Rain Permit Applications. A complete acid rain permit application shall contain the following elements in addition to those elements listed in LAC 33:III.517, in a format to be specified by the administrator:

1. — identification of the affected source for which the permit application is submitted; and

2. — identification of each unit at the source for which the permit application is submitted;

3. ~~\_\_\_\_\_ a complete compliance plan for each unit, in accordance with Subsections G, H, and M of this Section;~~
4. ~~\_\_\_\_\_ the standard requirements under Subsection J of this Section; and~~
5. ~~\_\_\_\_\_ if the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.~~

~~F. \_\_\_\_\_ Permit Application Shield and Binding Effect of Permit Application~~

~~1. \_\_\_\_\_ Once a designated representative submits a timely and complete acid rain permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an acid rain permit under Paragraph J.2 of this Section and Subsection D of this Section, provided that any delay in issuing an acid rain permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental information, as required by the permitting authority, necessary to issue a permit.~~

~~2. \_\_\_\_\_ Prior to the date on which an acid rain permit is issued, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete acid rain permit application shall be deemed to be operating in compliance with the Acid Rain Program.~~

~~3. \_\_\_\_\_ A complete acid rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of an acid rain permit as a final agency action subject to judicial review.~~

~~G. \_\_\_\_\_ Compliance Plans~~

~~1. \_\_\_\_\_ For each affected unit included in an acid rain permit application, a complete compliance plan shall include:~~

~~a. \_\_\_\_\_ for sulfur dioxide emissions, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit's compliance subaccount [after deductions under 40 CFR 73.34(c)] not less than the total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with this Section, one or more of the acid rain compliance options;~~

~~b. \_\_\_\_\_ for nitrogen oxides emissions, a certification that the unit will comply with the applicable limitation established by regulations implementing Section 407 of the Clean Air Act or shall specify one or more acid rain compliance options, in accordance with Section 407 of the Clean Air Act and regulations implementing Section 407 of the Clean Air Act.~~

~~2. \_\_\_\_\_ Multi Unit Compliance Options~~

~~a. \_\_\_\_\_ A plan for a compliance option, under Subsection H of this Section or Section 407 of the Clean Air Act and regulations implementing Section 407, that includes units at more than one affected source shall be complete only if:~~

~~i. \_\_\_\_\_ such plan is signed and certified by the designated representative for each source with an affected unit governed by such plan; and~~

~~ii. \_\_\_\_\_ a complete permit application is submitted covering each unit governed by such plan.~~

~~b. \_\_\_\_\_ A permitting authority's approval of a plan under Subparagraph G.2.a of this Section that includes units in more than one state shall be final~~

only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.

3. ~~Conditional Approval. In the compliance plan, the designated representative of an affected unit may propose any acid rain compliance option for conditional approval, provided that an acid rain compliance option under Section 407 of the Clean Air Act may be conditionally proposed only to the extent provided in regulations implementing Section 407 of the Clean Air Act.~~

a. ~~To activate a conditionally approved acid rain compliance option, the designated representative shall notify the Office of Environmental Services, Air Permits Division, in writing that the conditionally approved compliance option will actually be pursued beginning January 1 of a specified year. If the conditionally approved compliance option includes a plan described in Subparagraph G.2.a of this Section, the designated representative of each source governed by the plan shall sign and certify the notification. Such notification shall be subject to the limitations on activation under Subsections G and H of this Section and regulations implementing Section 407 of the Clean Air Act.~~

b. ~~The notification under Subparagraph G.3.a of this Section shall specify the first calendar year and the last calendar year for which the conditionally approved acid rain compliance option is to be activated. A conditionally approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.~~

c. ~~Upon submission of a notification meeting the requirements of Subparagraphs G.3.a and b of this Section, the conditionally approved acid rain compliance option becomes binding on the owners or operators and the designated representative of any unit governed by the conditionally approved compliance option.~~

d. ~~A notification meeting the requirements of Subparagraphs G.3.a and b of this Section will revise the unit's permit in accordance with Subsection O of this Section (administrative permit amendment).~~

4. ~~Termination of Compliance Option~~

a. ~~The designated representative for a unit may terminate an acid rain compliance option by notifying the Office of Environmental Services, Air Permits Division, in writing that an approved compliance option will be terminated beginning January 1 of a specified year. If the compliance option includes a plan described in Subparagraph G.2.a of this Section, the designated representative for each source governed by the plan shall sign and certify the notification. Such notification shall be subject to the limitations on termination under Subsection H of this Section and regulations implementing Section 407 of the Clean Air Act.~~

b. ~~The notification under Subparagraph G.4.a of this Section shall specify the calendar year for which the termination will take effect.~~

c. ~~Upon submission of a notification meeting the requirements of Subparagraphs G.4.a and b of this Section, the termination becomes~~

binding on the owners and operators and the designated representative of any unit governed by the acid rain compliance option to be terminated.

d. ~~— A notification meeting the requirements of Subparagraphs G.4.a and b of this Section will revise the unit's permit in accordance with Subsection O of this Section (administrative permit amendment).~~

#### H. ~~— Phase II Repowering Extensions~~

##### 1. ~~— Applicability~~

a. ~~— This Subsection shall apply to the designated representative of:~~

i. ~~— any existing affected unit that is a coal-fired unit and has a 1985 actual sulfur dioxide emissions rate equal to or greater than 1.2 lbs/mmBtu;~~

ii. ~~— any new unit that will be a replacement unit, as provided in Subparagraph H.2.b of this Section, for a unit meeting the requirements of Clause H.1.a.i of this Section; or~~

iii. ~~— any oil and/or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Secretary of Energy.~~

b. ~~— A repowering extension does not exempt the owner or operator for any unit governed by the repowering plan from the requirement to comply with such unit's acid rain emission limitations of sulfur dioxide.~~

2. ~~— The designated representative of any unit meeting the requirements of Clause H.1.a.i of this Section may include in the unit's Phase II acid rain permit application a repowering extension plan that includes a demonstration that:~~

a. ~~— the unit will be repowered with a qualifying repowering technology in order to comply with the Phase II emissions limitations for sulfur dioxide; or~~

b. ~~— the unit will be replaced by a new utility unit that has the same designated representative and that is located at a different site using a qualified repowering technology, and the existing unit will be permanently retired from service on or before the date on which the new utility unit commences commercial operation.~~

3. ~~— In order to apply for a repowering extension, the designated representative of a unit under Paragraph H.1 of this Section shall:~~

a. ~~— submit to the permitting authority, by January 1, 1996, a complete repowering extension plan;~~

b. ~~— submit to the administrator, before June 1, 1997, a complete petition for approval of repowering technology in accordance with Paragraph H.4 of this Section; and~~

c. ~~— if the repowering extension plan is submitted for conditional approval, submit by December 31, 1997, a notification to activate the plan in accordance with Paragraph G.3 of this Section.~~

4. ~~— Contents and Review of Petition for Approval of Repowering Technology~~

a. ~~— A complete petition for approval of repowering technology shall include the following elements concerning the technology to be used in a plan under~~

Paragraph H.2 of this Section and may follow the repowering technology demonstration protocol issued by the administrator:

- i. — identification and description of the technology;
  - ii. — vendor certification of the guaranteed performance characteristics of the technology, including:
    - (a). — percent removal and emission rate of each pollutant being controlled;
    - (b). — overall generation efficiency; and
    - (c). — information on the state, chemical constituents, and quantities of solid waste generated (including information on land-use requirements for disposal) and on the availability of a market to which any by-products may be sold;
  - iii. — if the repowering technology is not listed in the definition of a qualified repowering technology in 40 CFR 72.2, a vendor certification of the guaranteed performance characteristics that demonstrate that the technology meets the criteria specified for nonlisted technologies in 40 CFR 72.2, provided that the existence of such guarantee shall not be a defense against the failure to meet the criteria for nonlisted technologies.
- b. — The administrator may request any supplemental information that is deemed necessary to review the petition for approval of repowering technology.
  - c. — The administrator shall review the petition for approval of repowering technology and, in consultation with the Secretary of Energy, shall make a conditional determination of whether the technology described in the petition is a qualifying repowering technology.
  - d. — Based on the petition for approval of repowering technology and the information provided under Subparagraph H.4.b of this Section and 40 CFR 72.94(a), the administrator will make a final determination of whether the technology described in the petition is a qualifying repowering technology.
5. — Contents of Repowering Extension Plan. A complete repowering extension plan shall include the following elements:
- a. — identification of the existing unit governed by the plan;
  - b. — the unit's federally approved state implementation plan sulfur dioxide emissions limitation;
  - c. — the unit's 1995 actual annual sulfur dioxide emissions rate, or best estimate of the actual emissions rate; provided that the actual emissions rate is submitted to the permitting authority by January 30, 1996;
  - d. — a schedule for construction, installation, and commencement of operation of the repowering technology approved or submitted for approval under Paragraph H.4 of this Section, with dates for the following milestones:
    - i. — completion of design engineering;
    - ii. — for a plan under Subparagraph H.2.a of this Section, removal of the existing unit from operation to install the qualified repowering technology;
    - iii. — commencement of construction;
    - iv. — completion of construction;

- v. — start up testing;
- vi. — for a plan under Subparagraph H.2.b of this Section, shutdown of the existing unit; and
- vii. — commencement of commercial operation of the repowering technology;
- e. — for a plan under Subparagraph H.2.b of this Section:
  - i. — identification of the new unit. A new unit shall not be included in more than one repowering extension plan;
  - ii. — certification that the new unit will replace the existing unit;
  - iii. — certification that the new unit has the same designated representative as the existing unit; and
  - iv. — certification that the existing unit will be permanently retired from service on or before the date the new unit commences commercial operation; and
  - f. — the special provisions of Paragraph H.7 of this Section.
- 6. — Permitting Authority's Action on Repowering Extension Plan
  - a. — The permitting authority shall not approve a repowering extension plan until the administrator makes a conditional determination that the technology is a qualified repowering technology, unless the permitting authority conditionally approves such plan subject to the conditional determination of the administrator.
  - b. — Permit Issuance
    - i. — Upon a conditional determination by the administrator that the technology to be used in the repowering extension plan is a qualified repowering technology and a determination by the permitting authority that such plan meets the requirements of this Section, the permitting authority shall issue the acid rain portion of the operating permit including:
      - (a). — the approved repowering extension plan; and
      - (b). — a schedule of compliance with enforceable milestones for construction, installation, and commencement of operation of the repowering technology and other requirements necessary to ensure that Phase II emission reduction requirements under this Section will be met.
    - ii. — Except as otherwise provided in Paragraph H.8 of this Section, the repowering extension shall be in effect starting January 1, 2000, and ending on the day before the date (specified in the acid rain permit) on which the existing unit will be removed from operation to install the qualifying repowering technology or will be permanently removed from service for replacement by a new unit with such technology, provided that the repowering extension shall end no later than December 31, 2003.
    - iii. — The portion of the operating permit specifying the repowering extension and other requirements under Clause H.6.b.i of this Section shall be subject to the administrator's final determination, under Subparagraph H.4.d of this Section, that the technology to be used in the repowering extension plan is a qualifying repowering technology.



c. — Allowance Allocation. Allowances will be allocated in accordance with 40 CFR 72.44(f)(3) and (g).

7. — Special Provisions

a. — Emissions Limitations

i. — Sulfur Dioxide. Allowances allocated during the repowering extension under 40 CFR 72.44(f)(3) and 72.44(g) to a unit governed by an approved repowering extension plan shall not be transferred to any allowance tracking system account other than the unit accounts of other units at the same source as that unit.

ii. — Nitrogen Oxides. Any existing unit governed by an approved repowering extension plan shall be subject to the acid rain emissions limitations for nitrogen oxides in accordance with Section 407 of the Clean Air Act and regulations implementing Section 407 of the Clean Air Act beginning on the date that the unit is removed from operation to install the repowering technology or is permanently removed from service.

iii. — No existing unit governed by an approved repowering requirements imposed under Section 111 of the Clean Air Act.

b. — Reporting Requirements. Each unit governed by an approved repowering extension plan shall comply with the special reporting requirements of 40 CFR 72.94.

c. — Liability

i. — The owners and operators of a unit governed by an approved repowering plan shall be liable for any violation of the plan or Subsection H of this Section at that or any other unit governed by the plan, including liability for fulfilling the obligations specified in 40 CFR Part 77 and Section 411 of the Clean Air Act.

ii. — The units governed by the plan under Subparagraph H.2.b of this Section shall continue to have a common designated representative until the existing unit is permanently retired under the plan.

d. — Terminations. Except as provided in Paragraph H.8 of this Section, a repowering extension plan shall not be terminated after December 31, 1999.

8. — Failed Repowering Projects

a. — i. — If, at any time before the end of the repowering extension under Clause H.6.b.ii of this Section, the designated representative of a unit governed by an approved repowering extension plan notifies the administrator and the permitting authority in writing that the owners and operators have decided to terminate efforts to properly design, construct, and test the repowering technology specified in the plan before completion of construction or start-up testing and demonstrates, in a proposed permit revision, to the administrator's satisfaction, that such efforts were in good faith, the unit shall not be deemed in violation of the act because of such a termination. Where the preceding requirements of this Section are met, the permitting authority will revise the operating permit in accordance with this Section and Clause H.8.a.ii of this Section and Subsection M of this Section (permit modification).

ii. — Regardless of whether notification under Clause H.8.a.i of this Section is given, the repowering extension will end beginning on the earlier of the date of such notification or the date by which the designated representative was required to give such notification under 40 CFR 72.94.

b. — If the designated representative of a unit governed by an approved repowering extension plan demonstrates to the satisfaction of the administrator, in a proposed permit revision, that the repowering technology specified in the plan was properly constructed and tested on such unit but was unable to achieve the emissions reduction limitations specified in the plan and that it is economically or technologically infeasible to modify the technology to achieve such limits, the unit shall not be deemed in violation of the act because of such failure to achieve the emissions reduction limitations. In order to be properly constructed and tested, the repowering technology shall be constructed at least to the extent necessary for direct testing of the multiple combustion emissions (including sulfur dioxide and nitrogen oxides) from such unit while operating the technology at nameplate capacity. Where the preceding requirements of this Section are met:

i. — the permitting authority will revise the acid rain portion of the operating permit in accordance with Clauses H.8.b.ii and iii of this Section and Subsection M of this Section (permit modification);

ii. — the existing unit may be retrofitted or repowered with another clean coal or other available control technology;

iii. — the repowering extension will continue in effect until the earlier of the date the existing unit commences commercial operation with such control technology or December 21, 2003.

I. — Permit Contents

1. — Each acid rain permit (including any draft or proposed acid rain permit) will contain the following elements:

a. — all elements required for a complete acid rain permit application under Subsection E of this Section, as approved or modified by the permitting authority;

b. — the applicable acid rain emissions limitation for sulfur dioxide; and

c. — the applicable acid rain emissions limitation for nitrogen oxides.

2. — Each acid rain permit is deemed to incorporate the definitions of terms under 40 CFR 72.2.

J. — Standard Requirements

1. — The designated representative of each affected source and each affected unit at the source shall:

a. — submit a complete acid rain permit application under this Section in accordance with the deadlines specified in Subsection D of this Section;

b. — submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review an acid rain permit application and issue or deny an acid rain permit.

2. — The owners and operators of each affected source and each affected unit at the source shall:

a. — operate the unit in compliance with a complete acid rain permit application or a superseding acid rain permit issued by the permitting authority; and

b. — have an acid rain permit.

3.——Monitoring Requirements

a.——The owners and operators and, to the extent applicable designated representative, of each affected source and each affected unit at the source shall comply with all applicable monitoring requirements of 40 CFR Part 75 and Section 407 of the Clean Air Act and regulations implementing Section 407 of the Clean Air Act.

b.——The emissions measurements recorded and reported in accordance with 40 CFR Part 75 and Section 407 of the Clean Air Act and regulations implementing Section 407 of the Clean Air Act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the Acid Rain Program.

c.——The requirements of 40 CFR Part 75 and regulations implementing Section 407 of the Clean Air Act shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Clean Air Act or other provisions of the operating permit for the source.

4.——Sulfur Dioxide Requirements

a.——The owners and operators of each source and each affected unit at the source shall:

i.——hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount [after deductions under 40 CFR 73.34(e)] not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and

ii.——comply with the unit's acid rain emissions limitations for sulfur dioxide.

b.——Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the Clean Air Act.

c.——An affected unit shall be subject to the requirements under Subparagraph J.4.a of this Section as follows:

i.——starting January 1, 2000, an affected unit under Subparagraph A.1.b of this Section; and

ii.——starting on the latter of January 1, 2000, or the deadline for monitor certification under 40 CFR Part 75, an affected unit under Subparagraph A.1.c of this Section.

d.——Allowances shall be held in, deducted from, or transferred among allowance tracking system accounts in accordance with the Acid Rain Program.

e.——An allowance shall not be deducted, in order to comply with the requirements under Clause J.4.a.i of this Section, prior to the calendar year for which the allowance was allocated.

f.——An allowance allocated by the administrator under the Acid Rain Program is a limited authorization to emit sulfur dioxide in accordance with the Acid Rain Program. No provision of the Acid Rain Program, the acid rain permit application, the acid rain permit, or the written exemption under Subsections B and C of this Section and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

g. — An allowance allocated by the administrator under the Acid Rain Program does not constitute a property right.

5. — Nitrogen Oxides Requirements. The owners or operators of the source and each affected unit at the source shall comply with the applicable emissions limitation established by regulations implementing Section 407 of the Clean Air Act, as modified by an acid rain permit application and an acid rain permit in accordance with the requirements of the Acid Rain Program.

6. — Excess Emissions Requirements

a. — The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan, as required under 40 CFR Part 77.

b. — The owners and operators of an affected unit that has excess emissions in any calendar year shall:

i. — pay without demand the penalty required, and pay upon demand the interest on that penalty, as required by 40 CFR Part 77; and

ii. — comply with the terms of an approved offset plan, as required by 40 CFR Part 77.

7. — Recordkeeping and Reporting Requirements

a. — Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the administrator or permitting authority:

i. — the certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR 72.24, provided that the certificates and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative;

ii. — all emissions monitoring information, in accordance with 40 CFR Part 75;

iii. — copies of all reports, compliance certifications, and other submissions and all records under the Acid Rain Program; and

iv. — copies of all documents used to complete an acid rain permit application and any other submission under the Acid Rain Program or to demonstrate compliance with the requirements of the Acid Rain Program.

b. — The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the Acid Rain Program, including those under 40 CFR Part 72, Subpart I and 40 CFR Part 75.

8. — Liability

a. — Any person who knowingly violates any requirement or prohibition of the Acid Rain Program, a complete acid rain permit application, an acid rain permit, or a written exemption under Subsections B or C of this Section, including

any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement pursuant to Section 113(c) of the Clean Air Act.

b. — Any person who knowingly makes a false, material statement in any record, submission, or report under the Acid Rain Program shall be subject to criminal enforcement by the administrator, pursuant to Section 113(c) of the Clean Air Act and 18 U.S.C. 1001, and by the permitting authority.

c. — No permit revision shall excuse any violation of the requirements of the Acid Rain Program that occurs prior to the date that the revision takes effect.

d. — Each affected source and each affected unit shall meet the requirements of the Acid Rain Program.

e. — Any provision of the Acid Rain Program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.

f. — Any provision of the Acid Rain Program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under Subsection H of this Section (Phase II repowering extension plans) and Section 407 of the Clean Air Act and regulations implementing Section 407 of the Clean Air Act, and except with regard to the requirements applicable to units with a common stack under 40 CFR Part 75 (including 40 CFR 75.16, 75.17, and 75.18), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

g. — Each violation of a provision of 40 CFR Parts 72, 73, 75, 77, and 78 and regulations implementing Sections 407 and 410 of the Clean Air Act by an affected unit, or by an owner or operator or designated representative of such unit, shall be a separate violation of the Clean Air Act.

9. — Effect on Other Authorities. No provision of the Acid Rain Program, an acid rain permit application, an acid rain permit, or a written exemption under Subsection B or C of this Section shall be construed as:

a. — except as expressly provided in Title IV of the Clean Air Act, exempting or excluding the owners and operators and to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Clean Air Act, including the provisions of Title I of the Clean Air Act relating to applicable national ambient air quality standards or state implementation plans;

b. — limiting the number of allowances a unit can hold, provided that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the Clean Air Act;

c. — requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding such state regulation, or limiting such state regulation, including any prudence review requirements under such state law;

d. ~~—modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or~~

e. ~~—interfering with or impairing any program for competitive bidding for power supply in a state in which such program is established.~~

K. ~~—Each affected unit operated in accordance with the acid rain permit that governs the unit and that was issued in compliance with Title IV of the Clean Air Act, as provided in 40 CFR Parts 72, 73, 75, 77, and 78, and the regulations implementing Section 407 of the Clean Air Act, shall be deemed to be operating in compliance with the Acid Rain Program, except as provided in Subparagraph J.8.f of this Section.~~

L. ~~—Permit Revisions Generally~~

1. ~~—The acid rain permit revision procedures shall govern revisions to any acid rain portion of any operating permit.~~

2. ~~—Any determination or interpretation by state authorities (including the permitting authority or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the administrator in accordance with 40 CFR 70.8(c) as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with Subsection O of this Section.~~

3. ~~—A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the acid rain permit to be revised. No permit revision shall excuse any violation of an Acid Rain Program requirement that occurred prior to the effective date of the revision.~~

4. ~~—The terms of the acid rain permit shall apply while the permit revision is pending.~~

5. ~~—The standard requirements of Subsection J of this Section shall not be modified or voided by a permit revision.~~

6. ~~—Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under 40 CFR Part 72, Subpart D and Section 407 of the Clean Air Act and regulations implementing Section 407 of the Clean Air Act.~~

7. ~~—For permit revisions not described in Subsection M or N of this Section, the permitting authority may, in its discretion, determine which of these sections is applicable.~~

M. ~~—Permit Modifications~~

1. ~~—Permit revisions that shall follow the permit modification procedures are:~~

a. ~~—relaxation of an excess emissions offset requirement after approval of the offset plan by the administrator;~~

b. ~~—incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period; and~~

c. ~~—determination of whether efforts to design, construct, and test repowering technology under a repowering extension plan were in good faith and whether such repowering technology was properly constructed and tested under Subsection H of this Section.~~

2. ~~— The following permit revisions shall follow at the option of the designated representative submitting the permit revision and shall follow either the permit modification procedures under this Subsection or the fast track modification procedures under Subsection N of this Section:~~

a. ~~— incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process;~~

b. ~~— addition of a nitrogen oxides averaging plan to a permit;~~  
and

c. ~~— changes in repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension.~~

3. ~~— Permit modifications shall follow the permit issuance requirements of this Section and LAC 33:III.519.~~

N. ~~— Fast Track Modifications. The following procedures shall apply to all fast track modifications:~~

1. ~~— the designated representative shall serve a copy of the fast track modification on the administrator, the permitting authority, and any person entitled to a written notice under the requirements of this Chapter for permit issuance, treating a fast track modification as a proposed permit prior to public comment. Within five business days of serving such copies, the designated representative shall also give public notice by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice;~~

2. ~~— the public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast track modification. Comments shall be submitted in writing to the permitting authority and to the designated representative;~~

3. ~~— the designated representative shall submit the fast track modification to the permitting authority on or before commencement of the public comment period; and~~

4. ~~— within 30 days of the close of the public comment period, the permitting authority shall consider the fast track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification. A fast track modification shall be effective immediately upon issuance after the requirements for permit issuance under LAC 33:III.531.B and 533 (treating a fast track modification as a proposed permit) are met.~~

O. ~~— Administrative Permit Amendment~~

1. ~~— The following acid rain permit revisions are acid rain administrative amendments:~~

a. ~~— activation of a compliance option conditionally approved by the permitting authority, provided that all requirements for activation under Paragraph G.3 and Subsection H of this Section are met;~~

b. ~~— changes in the designated representative or alternative designated representative, provided that a new certificate of representation is submitted;~~

c. ~~— correction of typographical errors;~~

d. ~~— changes in names, addresses, or telephone or facsimile numbers;~~

e. ~~changes in the owners or operators, done in accordance with LAC 33:I.Chapter 19;~~

f. ~~termination of a compliance option in the permit, provided that all requirements for termination under this Section shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999; and~~

g. ~~addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, provided that the requirements of regulations implementing Section 407 of the Clean Air Act are met.~~

2. ~~Administrative amendments shall follow the procedures set forth in LAC 33:III.521.B.~~

P. ~~Automatic Permit Amendment. The following permit revisions shall be deemed to amend automatically and become a part of the affected unit's acid rain permit by operation of law without any further review:~~

1. ~~upon recordation by the administrator under 40 CFR Part 73 all allowance allocations to, transfers to, and deductions from an affected unit's allowance tracking system account; and~~

2. ~~incorporation of an offset plan that has been approved by the administrator under 40 CFR Part 77.~~

Q. ~~Permit Reopenings~~

1. ~~As provided in 40 CFR 70.7(f) and in LAC 33:III.529, the permitting authority shall reopen an acid rain permit for cause, including whenever additional requirements become applicable to any affected unit governed by the permit.~~

2. ~~Upon reopening an acid rain permit for cause, the permitting authority shall issue a proposed permit changing the provisions or adding the requirements for which the reopening was necessary.~~

3. ~~As necessary, the permitting authority shall reopen an acid rain permit to incorporate nitrogen oxides requirements, consistent with Section 407 of the Clean Air Act and regulations implementing Section 407 of the Clean Air Act.~~

4. ~~Any reopening of an acid rain permit shall not affect the term of the permit.~~

R. ~~Designated Representative~~

1. ~~Submissions (40 CFR 72.21)~~

a. ~~The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the administrator in accordance with Subpart B of 40 CFR Part 72 and, concurrently, shall submit a copy to the permitting authority. Whenever the term "designated representative" is used in this regulation, the term shall be construed to include the alternate designated representative.~~

b. ~~Each submission under the Acid Rain Program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.~~

c. ~~In each submission under the Acid Rain Program, the designated representative shall certify, by his or her signature:~~

i. ~~the following statement, which shall be included verbatim in such submission:~~



~~"I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made.";~~

ii. ~~the following statement, which shall be included verbatim in such submission:~~

~~"I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."~~

d. ~~The permitting authority will accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with Subparagraphs R.1.b and c of this Section.~~

e.i. ~~The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:~~

(a). ~~by the date of submission, of any Acid Rain Program submissions by the designated representative;~~

(b). ~~within 10 business days of receipt of a determination, of any written determination by the administrator or the permitting authority; and~~

(c). ~~provided that the submission or determination covers the source or the unit.~~

ii. ~~The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under Clause R.1.e.i of this Section, unless the owner or operator expressly waives the right to receive such a copy.~~

## ~~2. Objections (40 CFR 72.25)~~

a. ~~Except as provided in 40 CFR 72.23, no objection or other communication submitted to the administrator or the permitting authority concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action, or inaction of the designated representative, or the finality of any decision by the permitting authority, under the Acid Rain Program. In the event of such communication, the permitting authority is not required to stay any submission or the effect of any action or inaction under the Acid Rain Program.~~

b. ~~The permitting authority will not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.~~

## ~~S. Acid Rain Permit Appeal Procedures~~

1. ~~Appeals of the acid rain portion of an operating permit issued by the permitting authority that do not challenge or involve decisions or actions of the administrator under 40 CFR Parts 72, 73, 75, 77 and 78 and Sections 407 and 410 of the Clean Air Act and regulations implementing Sections 407 and 410 shall be conducted according to the procedures in the administrative and judicial appeals regulations~~

~~established by the state. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR Part 78 and Section 307 of the Clean Air Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is qualifying repowering technology.~~

~~2.——No administrative appeal or judicial appeal of the acid rain portion of an operating permit shall be allowed more than 90 days or shorter period as provided by the applicable state appeals procedures following, respectively, issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.~~

~~3.——The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit provision or denial of an acid rain permit.~~

~~4.——No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:~~

~~a.——the allowance allocations for any year during which the appeal proceeding is pending or is being conducted;~~

~~b.——any standard requirement under Subsection J of this Section;~~

~~c.——the emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 CFR Part 75;~~

~~d.——uncontested provisions of the decision; and~~

~~e.——the terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.~~

~~5.——The permitting authority will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within 30 days of the filing of the appeal.~~

~~6.——The permitting authority will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with LAC 33:III.533.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 21:678 (July 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2446 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2429, 2436 (October 2005), LR 32:\*\*.